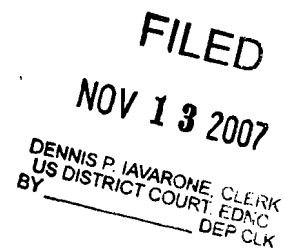


McCullers (NC Bar Number: 32283)
Christina M. Whitaker (NC Bar Number 31858)
McCullers & Whitaker, PLLC
1100 Logger Court
Bldg B, Ste 102
Raleigh, North Carolina 27609
P: (919) 790-2908
F: (919) 790-2948
Attorneys for Joe Thaler and Lavish Software, LLC



UNITED DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO: CV 06-2555 PHX DGC (District of Arizona)

MDY Industires, LLC,)	
)	
)	
Plaintiff,)	MOTION TO QUASH SUBPOENA
)	(Fed. R. Civ. P. 45(c)(3))
v.)	
)	
Blizzard Entertainment, Inc. and)	
Vivendi Games, Inc.,)	
)	
Defendants.)	

Relief Requested:

Joe Thaler and Lavish Software, LLC requests that this Court enter an order quashing the subpoena delivered to Joe Thaler's North Carolina residence on October 31, 2007.

First Ground for Relief:

The subpoena in question should be quashed because, pursuant to Rule 45(c)(3)(a)(i) and (iv) , the subpoena fails to allow reasonable time for compliance and

creates an undue burden on Joe Thaler and Lavish Software, LLC. As shown by the Affidavit of Joe Thaler:

1. Joe Thaler is a resident of Wake County, North Carolina.
2. Lavish Software, LLC is a limited liability company organized and existing under the laws of the State of Michigan, with its principal place of business in Wake County, North Carolina.
3. On October 31, 2007, an extremely broad subpoena was delivered to Joe Thaler's North Carolina residence, 10861 Hamilton Club Drive, Apt 301, Raleigh, North Carolina, 27617
4. Joe Thaler and Lavish Software, LLC are not parties to the present action.
5. The subpoena was served by Shane M. McGee, Counsel for Blizzard Entertainment, Inc. and Vivendi Games, Inc. (the Defendants).
6. According to the subpoena, the compliance date to produce all requested information is October 9th, 2007 at 9 am, a mere nine (9) days after the delivery of the subpoena. According to the subpoena, Joe Thaler was also scheduled to be present for a deposition on October 9th, 2007.
7. The subpoena commanded that Joe Thaler and Lavish Software, LLC produce, for inspection and copying, literally thousands of computer files that are stored on a currently unknown number of computers in multiple locations, possibly in different states.
8. Had the Defendants sought this information by means of a written request for production under Rule 34(a), the Defendants would have had to allow Joe Thaler and

Lavish Software, LLC at least thirty (30) days within which to file a written response to the request.

9. The time allowed by the subpoena for responding to it is unreasonable. There is simply no easy, quick way to search for and produce or copy the information requested.

10. Joe Thaler and Lavish Software, LLC have already filed written objections to this subpoena. Counsel for Joe Thaler and Lavish Software, LLC has contacted Counsel for the Defendants before bringing this Motion to Quash, but Counsel for the Defendants refused to voluntarily withdraw the subpoena or agree to substantially delay the compliance date.

Second Ground for Relief:

The subpoena in question should be quashed because, pursuant to Rule 45(c)(3)(B)(i), the subpoena calls for the disclosure of trade secrets. As shown by the Affidavit of Joe Thaler.

11. Numbered paragraphs 1-9 are hereby made a part of this, the Second Ground for Relief.

12. In this action, as more clearly shown in the copies of the pleadings attached to the Affidavit, MDY Industries, LLC (the Plaintiff) seeks a declaration that its software (WOWglider) does not infringe on any rights of a video game and online gaming environment (World of Warcraft) developed by Blizzard Entertainment, Inc. and Vivendi Games, Inc. (the Defendants). In turn, Defendants have filed counterclaims

against Plaintiff claiming that Plaintiff's WOWglider does in fact infringe on Defendants' World of Warcraft.

13. One of the Defendants' arguments is that Plaintiff's WOWglider allows owners of Defendants' World of Warcraft to cheat, thereby obtaining advantages over other World of Warcraft owners playing in the online gaming environment.

14. Lavish Software, LLC is a company which develops and produces software that tries to enhance its customers' online gaming experience.

15. In Schedule A of the Subpoena, specifically Number 3 and 4, the Defendants request all files located in the WTF directory from any and all World of Warcraft installations used or controlled by Joe Thaler or Lavish Software, LLC as well as a list of all World of Warcraft accounts registered, used or controlled by Joe Thaler of Lavish Software, LLC.

16. Producing or testifying in regard to the information requested by the Defendants or would cause great harm to Lavish Software, LLC, as it would basically require Joe Thaler and Lavish Software, LLC to turn over to Defendants Lavish Software's customer records, including specific World of Warcraft account information.

17. Joe Thaler and Lavish Software, LLC believe that these specific requests are not relevant to the underlying civil action. Instead, Joe Thaler and Lavish Software, LLC believe that the Defendants are attempting to use this subpoena to extract information from Joe Thaler and Lavish Software, LLC which they would otherwise not be privy. If this subpoena is not squashed and Joe Thaler and Lavish Software, LLC are made to produce this information, the Defendants could use this information to

subsequently suspend accounts of current, former and future Lavish Software, LLC customers.

18. The information requested by the Defendants is irrelevant to the underlying civil action and the disclosure of said information to the Defendants would result in widespread, devastating and irreparable harm to Joe Thaler, Lavish Software, LLC and their former, present and future customers.

Record on Motion:

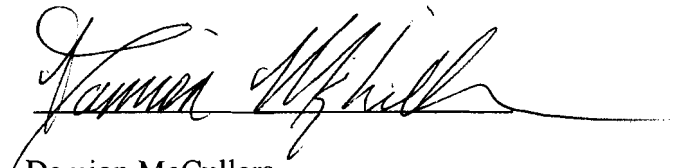
This Motion is based on this document, the attached notice of motion and certificate of service, the supporting Affidavit of Joe Thaler, and on whatever evidence and argument may be had at any hearing on this motion.

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2008, I served via facsimile and via email, if available, the attached Motion to Quash Subpoena to the following persons. I have contacted parties to inform them we are filing in this manner.

Shane McGee
Attorney for the Defendants Vivendi Games, Inc. and Blizzard Entertainment, Inc.
Sonnenschein Nath & Rosenthal LLP
1301 K. Street, N.W.
Suite 600, East Tower
Washington D.C. 20005
Facsimile (202) 408-6399
Email: smcgee@sonnenschein.com


Scott Stein
Attorney for the Defendants Vivendi Games, Inc. and Blizzard Entertainment, Inc.
Sonnenschein Nath & Rosenthal LLP
2398 East Camelback Road
Suite 1060
Phoenix, Arizona 85106
Facsimile (602) 508-3914

A handwritten signature in black ink, appearing to read "Damion McCullers", written over a horizontal line.

Damion McCullers
Attorney for Joe Thaler and Lavish Software, LLC

Dated this the, 8th day of November, 2007.

Respectfully Submitted,



Damion L. McCullers (NC Bar Number:)

McCullers & Whitaker, PLLC

1100 Logger Court

Bldg B, Ste 102

Raleigh, North Carolina 27609

P: (919) 790-2908

F: (919) 790-2948



Joshua M. Whitaker (NC Bar Number: 31858)

McCullers & Whitaker, PLLC

1100 Logger Court

Bldg B, Ste 102

Raleigh, North Carolina 27609

P: (919) 790-2908

F: (919) 790-2948

Attorneys for Joe Thaler and Lavish Software, LLC